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PATENT APPLICATION
09/811,239

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kenneth C. Hsu, et al.
Serial No.: 09/811,239
Filing Date: March 16, 2001
Confirmation No.: 8261
Group Art Unit: 2123
Examiner: Jason S. Proctor
Title: APPARATUS AND METHODS FOR CIRCUIT
 EMULATION OF A POINT-TO-POINT
 PROTOCOL OPERATING OVER A MULTI-
 PACKET LABEL SWITCHING NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action issued mailed January 16, 2007, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1 and 13 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by Chuah, et al. Claims 2-12 and 14-24 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chuah, et al. in view of Armitage. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of January 16, 2007 and the Final Action of October 18, 2006, the Examiner indicates that the mere presence of an Internet telephony Server in the Chuah, et al. patent dictates that time division multiplexing is in use therein. There is no basis in the Chuah, et al. patent for this assertion. From endpoint to endpoint within the network of the Chuah, et al. patent, only packets are being passed to and from the various elements of the network. None of these packets are time division multiplexed into a stream of data let alone are there any time division multiplexed data streams whatsoever within the network of the Chuah, et al. patent. The Examiner also states that time division multiplexing is the de facto transmission standard used in internet telephony applications. Contrary to this subjective unsupported

assertion of the Examiner, the Chuah, et al. patent clearly states that the Internet is a packet switched network and that two packets from the same message may not travel the same physical path through the network. Thus, there is no capability in the Chuah, et al. patent for time division multiplexing as the network in the Chuah, et al. patent is totally and exclusively Internet Protocol packet based. Therefore, the examiner's interpretation of the Chuah, et al. patent is misplaced.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of October 12, 2006 to establish a prima facie case of anticipation of the claims in the Application rejected under 35 U.S.C. §102(e). There has been no showing by the Examiner that each and every limitation of the claimed invention is disclosed in the Chuah, et al. patent. Independent Claims 1 and 13 recite in general an ability to receive a time division multiplexed data stream at an ingress end, divide said data stream into a set of fixed sized packets, add a service header to each of said packets, and add an additional header on top of said service header in accordance with MPLS protocols. By contrast, the Chuah, et al. patent is directed only to IP packet transport. The Examiner merely cites a general paragraph from the Chuah, et al. patent to support the ability to receive a time division multiplexed stream as claimed in justifying the rejection of the claims. However, the general paragraph of the Chuah, et al. patent cited by the Examiner merely states that other packet types other than IP packets may be used. Thus, the Chuah, et al. patent fails to disclose a capability to receive a time division multiplexed stream and divide the stream into fixed sized packets as provided by the claimed invention.

The Examiner has yet to show that the Chuah, et al. patent even contemplates interfacing with any time division multiplexed data stream let alone a capability to divide the time division multiplexed data stream into a set of fixed sized packets. Every portion of the Chuah, et al. patent cited by the Examiner is directed to packet technology and the structure of the packets. The Chuah, et al. patent clearly discloses that packets are sent from source access devices 106 to its Internet Telephony Servers 104 and eventually to its destination access devices 106. (See FIGURE 5 and Col. 6, lines 43-61, of the Chuah, et al. patent). There is no disclosure in the Chuah, et al. patent that its Internet Telephony Servers can handle anything beyond packets. Accordingly, the Chuah, et al. patent is concerned with a packet only network. Thus, the Chuah, et al. patent fails to disclose any time division multiplexed data stream or an ability to divide the time division multiplexed data stream into fixed sized packets as required by the claimed invention. As a result, the Examiner has failed to show that the Chuah, et al. patent teaches each and every limitation of the claimed invention to justify an anticipation rejection. Therefore, Applicant respectfully submits that Claims 1 and 13 are not anticipated by the Chuah, et al. patent.

Based on the remarks above, the Chuah, et al. patent is insufficient to support a rejection of Independent Claims 1 and 13. Since the Armitage, et al. paper does not include any additional disclosure that would be material to patentability of the claimed invention, the dependent claims are also patentably distinct from the cited art. Therefore, Applicant respectfully submits that the claims are patentably distinct from the cited art.

CONCLUSION

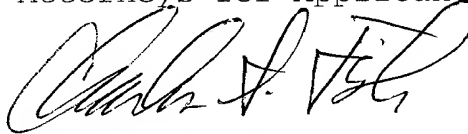
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read "Charles S. Fish", is written over the typed name.

Charles S. Fish

Reg. No. 35,870

February 16, 2007

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